



The Office of Vince Ryan
County Attorney

January 11, 2016

Mr. Ron Curry
Regional Administrator
EPA Region 6 Main Office
1445 Ross Avenue, Suite 1200, Mail Code 6F
Dallas, Texas 75202

Dear Mr. Curry:

On December 21, 2015 the Harris County Attorney's Office was advised by the United States Environmental Protection Agency (EPA) that a 20-foot gap in the rock cap covering the San Jacinto River Waste Pits site had occurred. The gap was discovered by an EPA dive team during an underwater survey of the site the week of December 10th. The discovery was announced to the public in the Agency's Site Update dated December 23, 2015. Harris County has frequently raised concerns about the plan for remediating the site, and the competency of the consultant employed by the Potentially Responsible Parties (PRPs) that is tasked with this highly sensitive public safety matter.¹ The EPA dive team that discovered the breach was dispatched by the EPA only after this office, Harris County Pollution Control Services, and other stakeholders raised serious questions about the inspection procedures being employed by the PRPs at the site and the sites vulnerability to catastrophic events including weather and barge strikes. This most recent revelation is very distressing and highlights the risk of leaving the waste in place as well as the failure of the draft Remedial Investigation and Feasibility Study (RI/FS) prepared by the PRPs to come up with a plan to protect the public and the environment from the dioxin-laden waste pits.

The recent EPA site surveys show a gap in the rock cap cover of approximately 20 feet in length. This gap is in an area where no protective liner was installed when the cap was constructed due to the steep slope of the river bank; so the area where the breach was discovered is of particular concern.

The most current plan for repair submitted by the PRPs calls for the addition of a geotextile membrane in the area of concern, as well as the placement of a rock cover. While this may be an acceptable quick-fix it should only be viewed as temporary; and it calls into question the sufficiency of the cap not only as a permanent solution, but its effectiveness as a temporary patch to a long term problem.

The cause of the breach has not been determined, however, it is imperative that a forensic investigation of its cause be conducted so that repairs are effective and that another breach is prevented. This office is working closely with Harris County Pollution Control Services and our consultants to make sure the planned repairs are effective. We have submitted preliminary comments that have been

¹ We will not repeat those concerns in this letter but will simply refer EPA to the Vince Ryan Letter of September 17, 2015.

worked into the draft repair plan and we have been assured by the EPA that we will be able to continue to review the repair plans. The EPA's directive that the responsible parties immediately repair the breach is encouraging and we thank EPA for its prompt action.

In light of the discovery of the breach, Harris County strongly feels the following additional steps must be taken with respect to the cap. Furthermore, Harris County urges the EPA to seriously consider these recent events as it prepares to issue a recommendation for the sites final remedy selection.

1. A complete and thorough forensic investigation as to the cause of the breach needs to be conducted by an independent party. The investigation should include:
 - a. A review of the construction, inspection and maintenance documents;
 - b. A review of inspection protocol and recommendations for improvement;
 - c. A determination of the cause of the breach;
 - d. A determination of the date of the breach; and
 - e. A determination of the extent of any release of material from the breach and an evaluation of the contents of the release with respect to all major contaminants at the site.
2. Additional underwater surveying of the entire site building on the survey already conducted, including additional side-sonar or other suitable electronic equipment to insure there are no more gaps in the cap.
3. As part of their ongoing review of the proposed remediation options the United States Army Corps of Engineers (USACE) should be provided all documentation developed with respect to the breach.

The cap, which was designed as a temporary solution, has failed a few short years after being constructed. This failure is in addition to the frequent repairs that are necessary anytime a storm event passes over the cap. Unfortunately, the discovery of the 20 foot breach is only further proof that the cap has failed as a temporary solution and further supports Harris County's long standing position that the only way to really protect the residents of Harris County from the danger posed by this site over the next 100 years or more is to demand the EPA require excavation and removal of the waste.

Sincerely,

VINCE RYAN
Harris County Attorney